The Oil Forum, August, 1953

IRAN'S INTEREST BEST SERVED

If Mossadegh Will Submit Its Case Against The AIOC To The INTERNATIONAL COURT

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STANDARD PANEL

It is significant that the author of the following article is a Prince of Iran by heritage, and now of the Columbia University Law School. Like many other clear-thinking men of his country, he realizes the great importance of early settlement of the unfortunate oil dispute between his Government and the Anglo-Iranian Oil Co., and recommends that their respective claims should be placed in the hands of the International Court of Justice as the best way out of the difficult situation. He does not hesitate to speak freely about the attitude of both parties for he believes that neither can get what has been demanded. This is the second discussion by Dr. Farmaian, and supplements an article in our November, 1952, issue by his [redacted] brother, Prince Manoucher Farman Farmaian, former Director General of the Government's Oil Dept., who is now back in Teheran.

It is to the Interest of Iran to Submit to the Jurisdiction of the International Court of Justice, by Dr. Abolbashar Farmanfarma

The gulf that once separated the position of Iran from that of England in respect to the settlement of the oil dispute, and rendered futile all endeavors made by the United States to solve this rather awkward problem, is now far more narrow than it has ever been. A glance at the change of position by Dr. Mossadegh, indicated in the recent statements made by his advisers, demonstrates this fact.

At the beginning Dr. Mossadegh and his advisers were absolutely against any suggestions to settle in the International Court of Justice the dispute, which has been confined to the amount of damages due the British as a result of nationalization of the oil industry in Iran.

The Iranians maintained that the Court had no power to order an interim measure of protection for the preservation of the status quo until the Court had decided upon its own jurisdiction of the case. When the Court ruled against the Iranians in this respect, Dr. Mossadegh and his advisers were greatly indignant and made no secret of this fact, giving rise to sentiments by the public in Iran. The visit of Dr. Mossadegh to the United States to defend the case in the United Nations seems to have had decisive effects upon him. At least it made him realize that it was better for his country to appear in the Court while that body was considering its competence to deal with the merits of the case. The decision of the Court, which was against its own jurisdiction, was a new experience to Dr. Mossadegh. He saw for himself that legal arguments and not political considerations are the basis for the Court's decisions. He learned for the first time that his own speech in the Court, which was prepared by a staff of political-speech writers

who accompanied him from Teheran, was given almost no weight, while the arguments of his Belgian legal counsel finally won the day.

One should bear in mind that Dr. Mossadegh had, with the exception of a few months during the twenties, never been in an executive position to have learned about such newly created international bodies. For the first time he became prime minister in 1951 and had naturally very little understanding of international relations. He has since learned a great deal but, as yet, not enough. His recent knowledge of ~~learning in respect~~ to the International Court of Justice has caused him ~~mostly directed him~~ to trust this international body.

The uncompromising position of Dr. Mossadegh, that the dispute is one of domestic concern, has been somewhat modified. Recently Dr. Mossadegh has declared that he would submit to the jurisdiction of the Court if the British would first announce the maximum sum of damage which they might claim. The British on the other hand say that the parties should submit to the jurisdiction of the Court without reservation. The differences between these two views are in reality negligible, if the two sides could only make use of a slight measure of common sense and overcome their psychological difficulties. In the remaining paragraphs I shall endeavor to demonstrate some of these psychological difficulties and also that legally speaking the position taken by the parties is in the last resort almost exactly the same.

I

The dispute between Iran and England began when, on March 16, 1951, the Parliament of Iran declared the oil industry nationalized. This law was applied to the contract between Iran and the Anglo-Iranian Oil Company which was concluded in 1933 for a term of sixty years. The operations came to a halt and the company was expelled.

There is no doubt that the Parliament of Iran had the power to enact the law of March 16 and cancel the concession of 1933. It is an established principle of law in the civilized nations of the world that a nation, when it deems it necessary, may take over a contract granted to private concerns. This principle was fully and completely recognized and articulated by the United States Supreme Court in the case of West River Bridge Company v. Dix et al. (47 U.S. 507). But, of course, this power of a nation is limited by the requirement of a just compensation. Iran therefore, by enacting the mentioned law, has not committed an international delinquency. It is however required by law to make compensation for the rights of the British company. The dispute is now upon the formula by which the sum of the damages will be computed.

There is no hard and fast rule concerning such a formula. A great deal depends upon the discretion of the deciding tribunals, and also upon the peculiarities of the particular case under consideration. The uncertainty inherent in the case between Iran and England seems to be the most decisive factor in keeping the parties apart. A brief examination of the similar disputes which have been settled before will explain the adament position of the Government of Dr. Mossadegh, which is also perplexed by fear and distrust.

There are a number of cases in which an international tribunal has been asked to decide upon a dispute between a government and an alien, in which the abrogation of a concession granted by the government to that alien have been the basis of the litigated claim.

The formula employed by the international tribunals to solve such problems has two different parts. First they compute the expenses

suffered by the contractor or the damages sustained, and secondly they add to it the profits which he would have made if the contract had not been interfered with. The first item is usually easy in computation. The principle of fair investment will provide a basis. It is in connection with the second part that the tribunals encounter difficulties. No one can really say what would have been the profits of a contractor who has been prevented from performing. It is a process of guesswork. The Courts usually take as a basis the average yearly profits of the contractor during the years in which he performed and multiply it by the years remaining from the terms of the contract. For example, if a contractor was to cut a certain amount of trees and pay certain royalties, as the case was in the Estate of Dr. Cheek (U.S. v. Siam), the tribunal may say that ~~Dr. Cheek~~ the Contractor had made a certain amount of yearly profits and in the natural course of events he could have continued in the same fashion. It, therefore, awarded Dr. Cheek the profits which he presumably would have made, and the basis was the average of his yearly profits during the years of performance.

The rule of damages sustained plus the profits lost is applicable to the case of Iran and England. The first item, that is, damages should be sustained by the Company, is easy to compute. Iran has on different occasions indicated that it is ready to pay this part. The difficulties arise when the second item, the future profits, are to be calculated. The company operated from 1933 to 1950. The following table will show an average of the annual profits:

Year	Profits in Pounds
1933	£ 4,199,000
1943	13,300,000
1948	52,700,000
Total, 3 years	70,199,000
Average	23,399,000

This average multiplied by 42, the number of years remaining for the concession, would make almost one billion pounds sterling, or 2.8 billion dollars. Such an astronomical figure is surely beyond the reaches of the power of Iran and explains the adament position of Dr. Mossadegh. Adding to this figure the capital investment and the interest, one cannot help but sympathize with the uncompromising position taken by the Iranians in connection with submitting to the jurisdiction of the Court without reservation. If the true sums due the British were as large as these the Iranians would forever remain in debt.

The truth, however, is different. There are certain mitigating factors which Iranians seem not to have considered with care or submitted to learned counsels or authorities in the field of international law. These mitigating factors, the writer maintains, may reduce the above sum to a manageable amount.

II

It is to the mitigating factors involved in the particular case of Iran and England that this section shall be devoted.

1. At the first glance one may easily dismiss the "average" system discussed above. In the example given and in all of the analogeous cases in which the average system has been employed, the deciding tribunal was acting years after the terms of the contract had expired and thus could look back and calculate the conditions of the business involved in the contract. The case of Iran, however, is very different. The future profits of the company during the forty years from now are to be calculated. No one is certain about the ups and downs that the oil business will have to suffer in such a long period in the future. Taking only one controlling factor out of many involved in deciding the profits

of the company, the point will be clearer.

The contract of 1933 was concluded between the parties when oil in the Gulf of Mexico was no more than a few cents per barrel. (It was $ - Editor.) Today it is nearly three dollars. In 1933 most of the oil companies lost money and not until the war did they recovered their previous conditions. War caused a rise in prices unprecedented and also in profits. War certainly was an unusual event, and no one can say what events will increase or decrease the price of oil during the forty years to come. This uncertainty in the business is one of the most decisive factors in rendering the average system entirely unjust and inapplicable. Who can say whether oil within ten years would not be obsolete as a source of power in the light of atomic discoveries?

When a court is faced with so great a possibility of fluctuation it will not consider the conditions of the past as the decisive factor in calculating future profits.

2. It is an established principle of law that future profits for the breach of contract should be reasonable and also should have been within the contemplation of the parties when the contract was concluded. The English case of Hadley v. Baxendale is the basis for this doctrine. Now the question is whether such profits as made in the war and postwar years were within the contemplation of the parties in 1933. The answer is obviously to the negative, and Iranians have solid ground to prove their point.

a. In 1933 and years thereafter the profits of the company were small; the rise came during the latter years of the war. No prophetical soul in 1933 could have possibly imagined such unusual rises in demand for oil. The bargain in 1933 seemed so precarious to the British company

that it demanded and finally obtained a condition in the concession that it could unilaterally cancel the contract by a two-year's notice. When such provisions were made it is obvious that such extraordinary profits could not have been expected and hence were not in the contemplation of the parties.

B. After the war the disproportionate profits of the company and the negligible share of the Iranians caused some concern among the officials in charge. Protracted negotiations between Iran and the Company finally produced results. The Company admitted that the rise in prices was unusual and a supplemental agreement was concluded which considerably increased the share for Iran. This agreement failed to be ratified by the parliament of Iran in 1949. The terms of this agreement, even though unratified, show that such fabulous profits were not in the contemplation of the parties, and the concession would have been different if the Iranians had thought of these unusual rises in prices.

C. During and at the conclusion of the war American companies became interested in the oil of the Near East and concluded a number of concessions for exploitation and construction of refineries. Since 1949 all of these contracts have been arranged on a 50-50 basis, while the share of Iran in the 1933 concession was far below that. The more favorable terms given by the Americans to the countries bordering Iran and under the same circumstances is an indication that in 1933 neither side could have possibly foreseen what changes were to happen in the business, and by the same token neither side could contemplate such profits as are now being made. The offer by the Anglo-Iranian Oil Company to share the profits with Iran on the basis of 50-50 from 1950 is another evidence of extremely unusual and unexpected profits.

The factors mentioned all show that the future profits as calculated on an average basis have not, or indeed could not have been within the contemplation of the parties and surely will not be allowed if the case is submitted to the International Court of Justice.

3. It is important to inquire whether the Anglo-Iranian Oil Company has actually suffered losses and to what extent. In an advertisement of May 25, 1953, in the New York Times the Anglo-Iranian Oil Company gave the following figures for its profits of the year 1951 and 1952:

	1952 (in Pounds)	1951
Gross Trading Profits	59,553,678	71,377,882
Profits before U.K. Taxation	47,061,638	52,217,016
Net profits after Taxes	25,165,966	24,233,050

These figures after the loss of Iran's oil are by no means comparable with the years preceding 1945. In 1943 the Company's profits were only £13,300,000, with Iran's oil in full operation. The Company, therefore, has not actually suffered losses as great as it may in the first glance appear. True, they no longer own and control a vast reservoir of oil and a gigantic refinery, but they operate at full force and without much actual loss. It may be just for the company to claim the price of the installments in Iran, but no future profits, because there was no actual loss of them. The Company cannot argue that if Iran's operations had been kept open the profits from them would have been added to those quoted for 1952. There is only a certain amount of market open to the Anglo-Iranian Oil Company in its competition with other major oil companies. If the A I O C could show that such markets or opportunities were lost, then it could claim damage to that extent.

Otherwise it would be highly speculative to imagine a limitless market in a vacuum and award damages based upon such an imaginary circumstance.

4. According to the terms of the 1933 concession, the A I O C is bound to pay to Iran 20% of its net profits from its assets located outside of Iran and from the operation of its subsidiaries. What exactly these assets are has not been decided. But the potentialities are very great. For example, the Company owns the largest fleet of tankers in the world; it owns and controls enough oil fields in the Near East that they enabled it to meet its obligations without the oil of Iran. It is certain that Iran had a right to 20% of the net profits derived from these vast assets. After nationalization, Iranians ~~have taken~~ over the assets located inside of Iran, but have not been able to do anything concerning the above-mentioned outside assets. The A I O C on the other hand had always endeavored to separate its assets outside of Iran from those inside of it. The concession always prevented the efforts to bear fruit. The nationalization by Iran provided the best and the most legitimate excuse to materialize this long delayed separation.

The title of Iran to 20% net profits made by the Company for its extra-Iranian assets will in a court of justice give Iranians opportunity to argue in two different lines. First that they ~~are~~ were entitled to receive 20% of the assets themselves if a separation is inevitable. Secondly that they ~~are~~ were entitled to 20% of all future profits to be made from out of Iran assets until the termination of the concession in 1993.

If Iranians continue as they are they will never recover any part of these vast assets outside of Iran. But if they submit to the jurisdiction of the International Court of Justice they at least will get a chance of establishing their rights to a good portion of these

assets and thereby mitigate or reduce the damages due the Company.

5. According to the terms of the concession, the title to all the holdings of the Company in Iran will shift to Iran at the termination of the contract. Now the Company claims the price of all these installations, which may run up to half a billion dollars. Iran has agreed to pay for the price of the installations when a settlement is reached. This is an act of sheer foolishness on the part of Iran. If all the assets located in Iran were to belong to that country at the termination of the concession, one can argue that the Company, however in full control of them, cannot in law and equity claim a complete ownership. It is an ownership or fee in terms of years. The control of the Company is surely limited by the right of Iran to eventually own the whole of the assets. The Company in 1952 was entitled to the use of these assets for forty-two years only. This limitation is a very important factor in evaluating the assets of the Company inside of Iran.

A court of justice is the only resort in which such theories can be advanced and would receive full consideration. For example, Iranians could have stopped the company from transporting out of Iran a portion of these installations. It would have been a waste to the detriment of Iran. The International Court of Justice is the only tribunal in which Iranians can establish such rights, otherwise they will be paying undue sums.

One may go on and mention other factors which will have decisive effect upon reducing the damages due the Company. But the legal advisers of Dr. Mossadegh's Government seem to have been entirely unaware of them. They have only considered the possibility of the

Court's awarding the Company an astronomical figure for future profits. They therefore have refused to submit to the jurisdiction of the Court. The ~~unawareness~~ lack of knowledge of the legal advisers of Dr. Mossadegh is sometimes ~~astonishing~~ astonishing. They have not even made a study of the principles governing the nationalization of industries in the Western nations. They are satisfied with superficial and general conceptions without analyzing the details and understanding the delicacies of law.

For example from the very beginning the supporters of the nationalization movement have been holding the amazing falacy that the Mexican Government has been able to manage the nationalization, and they concluded that Iran could follow suit. No one in Iran has as yet taken the trouble of making a ~~brief~~ thorough study of the Mexican case, and still the Government sends its counsels to Mexico for getting advice. For those who have studied the Mexican case it is but too clear that legally speaking the dispute between Iran and England has absolutely nothing in common with the nationalization of the oil industry in Mexico and the ensuing dispute with the United States. The utter illiteracy of the law demonstrated on the part of the Government of Iran is the most tragic factor in this international dispute, which may well give rise to the control by the Communists of Iran.

The British on the other hand are aware of the law and have had a long tradition of litigation in international tribunals and also have made particular study of nationalization laws. They are quite sure that if the International Court of Justice takes jurisdiction of the case the award of damages will surely be for less than what one may surmise at first glance. Bearing this in mind, if there was a genuine desire on the side of the British to settle the dispute, they could have reduced their claim for damages at least to the extent that the Court would have

done if it considered the dispute. In this way they would give an assurance to the Iranians, who would then submit to the jurisdiction of the Court.

There is an Arabic maxim that men hate and fear what they do not know or do not understand. This is true at least in the case of Iranians. They hate and fear international tribunals because they do not understand them. Their adamant position stems from their sheer ~~illiteracy~~ ignorance of the law and lack of trust in the court. There is no malice in it. The uncompromising position of the British, however, is a calculated one, with full knowledge of its dangerous and destructive consequences.

Dr. Mossadegh has declared that he would submit to the International Court of Justice if the British first set the maximum sum which they shall claim in the Court. This Dr. Mossadegh does for two reasons. First to reduce the astronomical figure of future profits. Secondly to guard against a possible fall of his government or his own death. He is afraid that in either event the following government may be lacking in will to continue the fight in the Court, thus submitting to the extraordinary demands of the British Government. Those who are familiar with the politics in Iran agree that these fears are well founded, and those who want to see this dispute settled, including the American Government, must give the necessary assurance to Dr. Mossadegh and remove an explosive mine from the way toward a better understanding in international relations.

The British Government through its legal advisers could easily calculate the approximate sum which the Court might award if the dispute was submitted to its jurisdiction. This sum, according to the above discussion, will be necessarily considerably less than the astronomical

figure which has made Iranians extremely cautious. Then, basing upon this calculated sum, it is possible to bring the Government of Iran in line and submit the whole case to the Court. The demand by the Government of Dr. Mossadegh that a sum be set out as the maximum claim of the British Government is not therefore altogether out of line with reason and the latter should be able to see the points involved in it.

Now the reasons why the British Government refuses to comply with this wish of the Government of Iran, although it by no means touches upon the substance of the claim, involve as much psychological and petty politics as there are indications of illiteracy in the position of the Government of Iran. It is now proper to consider some of these political and psychological reasons which have kept the parties separate.

III

1. In 1912 when the British Government put up £2,000,000 and bought a controlling share of the A I O C, with the exception of Mr. Winston Churchill, then the First Lord of the Admiralty, not a single man of influence thought the project to be of any political or economic use. Mr. Churchill (now Sir Winston Churchill) managed to get his way, and the events proved him to be right. The undertaking florished into a worldwide organization and returned to the British Government hundreds of times more that it had invested. The Company concluded long term contracts with the Admiralty for its supply of oil at a price far below market, thereby assuring to it both a steady supply and a low price. The British Government on the other hand saw to it that a friendly person always had the control of politics in Iran, and the Company expanded to its present day conditions.

The consequences of the activities of the British Government in

Iran had a great deal to do with the movement led by Dr. Mossadegh, but its details are beyond the scope of this article. The most important point to be borne in mind is in connection with the person of Mr. Churchill. The Company and its fruitful developments, so far as the British Government is concerned, was the child of his mind. Had it not been for his pressure perhaps the Company would not have been what it is. Now he is called upon to preside over the dissolution of the main part of the assets of the Company. In other words he is asked to cut into two pieces the child of his own mind. Such things Mr. Churchill has not done and there is absolutely no indication that he would do it this time.

2. There is one more decisive point that has to do with the person of Mr. Churchill. His attitudes towards Asia have always been those of strict colonialism, or rather imperialism. During the thirties he parted from the Government in Great Britain because of its policy with respect to India. In his speeches he referred to Gandhi and other Indians in such terms that humanity will neither forget nor forgive. During the war when the question of independence for India came up and President Roosevelt pressed for it, Mr. Churchill opposed all American suggestions and their correspondence is a typical example of the idealogies of the two men.

It is too obvious that a man with such a state of mind as that of Mr. Churchill does not look favorably upon a nationalistic movement in Iran. He will do everything to stop or quench it. And when he is the leader of the Conservative Party and in power he will not permit the Government of Dr. Mossadegh to prove itself capable of coping with England.

It was rather clear that the dispute with Iran would drag along,

and Mr. Churchill made an issue of it during the last elections. He declared that he knew men like Mossadegh and they should be stopped by effective resistence. He won the elections, and in democracies winning an election means a great deal. Mr. Churchill now apparently has the nation behind him, and he will not compromise, particularly when the Company can meet its obligations without the oil of Iran.

3. Besides the personal attitudes there is the prestige of ~~England~~ Great Britain at stake. The way Mossadegh threw the British subjects out of Iran was unprecedented. In the history of the British Empire such things have not gone unpunished. But in the face of the United Nations England could not have possibly used force. Now if ~~she~~ Churchill gives way to the demands of Mossadegh she will be sweeping the last remnants of the old British prestige into the oceans.

IV

Now stand ~~in front of~~ facing each other Iran and England, with a dispute to keep them apart. As already stated and discussed ~~above~~, the differences between them are negligible, and only some rather outmoded attitudes on the side of ~~England~~ Great Britain and utter illiteracy of law on the side of Iran are adding fuel to a useless fire. What is the way out?

It was said that the fear of Iran from international justice is groundless. The only thing is that Dr. Mossadegh should be given some assurance that in event of his death or fall the British would not try to take undue advantage from the ensuing consequences. The British on the other hand should ease their stubbornness and face the reality, that if the case is submitted to the International Court of Justice the award of damages would be considerably less than what it appears to be.

To materialize the hope of many that the dispute will be settled, the Government of the United States can take the following line of policy.

First call upon the British Government to note that an unqualified submission by Iran to the jurisdiction of the International Court of Justice would cause a great deal of political embarassment for Mossadegh, but adds nothing to the damages that the Court may award. Secondly, the British and American lawyers can easily weigh the two different scales of damages in this dispute. On the one hand they can calculate the future profits and the values of the assets of the Company taken over by the Government of Iran. On the other hand they can measure the mitigating factors and finally come to a figure for damages which seems to be reasonable, equitable and above all in the form of dollars and cents. One should bear in mind that Iranians are afraid of abstract terms. By this step the desired assurance is given to Dr. Mossadegh. Thirdly, a loan should be advanced to Iran to start the operation of oil industry, and contracts for the sale of oil in large quantities be concluded. Lastly, a treaty should be concluded between Iran and England to take the whole dispute to the International Court of Justice, provided the sum awarded would not exceed the sum agreed upon beforehand.

It is imperative to bring Dr. Mossadegh to realize that the Court would not award an astronomical figure for the future profits and that his legal advisors are not familiar with law. It is also just as imperative to bring the British Government to see that petty politics of the Victorian era in mid-twentieth century, with Russia at the north of Iran, is dangerous, to say the least.

Whether the American Government is able to assert its leadership and use its skill remains to be seen. But it is the conviction of the present writer that in any event it is to the best interest of Iran to submit to the jurisdiction of the Court. It must do so, however, in a learned way. Iran must employ two of the most able legal advocates now

in the profession. One English speaking, preferably American, a man like Justice Jackson of the Supreme Court of the United States, or like J. W. Davis. Then one other advocate who has been trained in the civil law tradition, preferably French or Belgian, like the person employed to defend Iran when the International Court of Justice was considering its jurisdiction of the case. Besides these two advocates, Iran must employ a great number of lawyers and authorities in the fields of contract law, public law and international law, who have had training in both civil law and common law tradition. These men should prepare materials that the advocates would present to the Court. Iran has a good case, and must pay good fees and impress the Court by an array of authorities unprecedented in history.

In the face of authority and good legal argument the International Court of Justice cannot help but reach a favorable verdict.

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New York, June 1953